

STATE OF FLORIDA  
COMMISSION ON HUMAN RELATIONS

FILED

2011 MAR -3 AM

DIVISION OF  
ADMINISTRATIVE  
HEARINGS

WILLY FILS LOUIS-CHARLES,

EEOC Case No. NONE

Petitioner,

FCHR Case No. 2010-01427

v.

DOAH Case No. 10-9206

MIAMI SCIENCE MUSEUM,

FCHR Order No. 11-021

Respondent.

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**FINAL ORDER DISMISSING PETITION FOR  
RELIEF FROM AN UNLAWFUL EMPLOYMENT PRACTICE**

Preliminary Matters

Petitioner Willy Fils Louis-Charles filed a complaint of discrimination pursuant to the Florida Civil Rights Act of 1992, Sections 760.01 - 760.11, Florida Statutes (2007), alleging that Respondent Miami Science Museum committed an unlawful employment practice on the basis of Petitioner's age (not specified in complaint) and on the basis of retaliation by terminating Petitioner from employment.

The allegations set forth in the complaint were investigated, and, on August 16, 2010, the Executive Director issued his determination finding that there was no reasonable cause to believe that an unlawful employment practice had occurred.

Petitioner filed a Petition for Relief from an Unlawful Employment Practice, and the case was transmitted to the Division of Administrative Hearings for the conduct of a formal proceeding.

Administrative Law Judge Eleanor M. Hunter considered the matter at a motion hearing on Respondent's motion for summary judgment on December 8, 2010.

Judge Hunter issued a Recommended Order of Dismissal, dated December 10, 2010, recommending the Commission dismiss the matter because the complaint was untimely.

The Commission panel designated below considered the record of this matter and determined the action to be taken on the Recommended Order of Dismissal.

Findings of Fact

We find the Administrative Law Judge's findings of fact to be supported by competent substantial evidence.

We adopt the Administrative Law Judge's findings of fact.

### Conclusions of Law

We find the Administrative Law Judge's application of the law to the facts to result in a correct disposition of the matter.

We adopt the Administrative Law Judge's conclusions of law.

### Exceptions

Petitioner filed exceptions to the Administrative Law Judge's Recommended Order of Dismissal in a document entitled "Petitioner's Exceptions to Recommended Order Entered December 10, 2010," received by the Commission on December 20, 2010. Respondent filed a response to this document received by the Commission on December 30, 2010.

Petitioner's document excepts to the dismissal of the complaint as untimely, suggesting: (1) that Petitioner's filing of a Technical Assistance Questionnaire with the Commission within 365 days of the alleged discriminatory act was sufficient to meet the requirement that a complaint be filed within 365 days of the alleged discriminatory act; and (2) that the late-filing of the complaint was excused by the doctrine of equitable tolling.

With regard to Petitioner's filing of a Technical Assistance Questionnaire, the Administrative Law Judge found that Petitioner was terminated from employment with Respondent on March 13, 2009, that Petitioner's deadline for filing a complaint with the Commission was March 14, 2010, that Petitioner e-mailed a Technical Assistance Questionnaire to the Commission on February 18, 2010, and that Petitioner signed an Employment Complaint of Discrimination and dated it on March 24, 2010, which was stamped received by the Commission on March 25, 2010. Recommended Order of Dismissal, ¶ 1 through ¶ 5.

The Commission's rules indicate that a complaint must be in writing, shall be signed by the complainant and shall be verified. Fla. Admin. Code R. 60Y-5.001(5). The Florida Civil Rights Act of 1992 indicates that a complaint shall be verified. Section 760.11(1), Florida Statutes (2007).

There is no finding by the Administrative Law Judge as to whether the Technical Assistance Questionnaire filed with the Commission by Petitioner on February 18, 2010 was signed by Petitioner. Petitioner appears to suggest that this document was signed by Petitioner. See Petitioner's exceptions document, page 6. Respondent suggests that it was not. See Respondent's response to Petitioner's exceptions, page 6.

In conclusions of law adopted by a Commission panel, it has been held that an unsigned Technical Assistance Questionnaire cannot serve as a complaint. See Perez v. Market Salamander, FCHR Order No. 09-110 (December 14, 2009), adopting conclusions of law contained in the Recommended Order of DOAH Case No. 09-3478.

In the absence of a finding that the Technical Assistance Questionnaire in question was signed by Petitioner, we reject Petitioner's exception that the filing of the Technical Assistance Questionnaire in question amounted to the filing of a complaint.

Parenthetically, a review of the Commission's investigative file for this case reveals a Technical Assistance Questionnaire signed by Petitioner dated March 3, 2010, was received by the Commission on March 11, 2010. This Technical Assistance Questionnaire was not placed in evidence before the Administrative Law Judge by either party. In addition, there is no indication on this document that the document was verified as required of a complaint by the above-indicated rule and statute. See, generally, Pijnenburg v. West Georgia Health System, 255 F.3d 1304 (11<sup>th</sup> Cir. 2001), indicating that an unverified EEOC intake questionnaire could not serve as a complaint.

With regard to Petitioner's exception that the matter should not be dismissed based on the application of the doctrine of equitable tolling, a Commission panel has stated, "We note that with regard to 'equitable tolling' of the 365-day time period for filing a Complaint of Discrimination under the Florida Civil Rights Act of 1992, a Florida District Court of Appeal reviewing a case brought under the Act has stated, 'the only acts or circumstances that will toll a limitations period are those enumerated in Section 95.051(2)...' Greene v. Seminole Electric Cooperative, Inc., 701 So. 2d 646, at 648 (Fla. 5th DCA 1997); accord Gonima v. Manatee County School Bd., 2007 WL 1222577 (M.D. Fla. 2007), and Cunningham v. Pinellas County Sheriff's Dept., 2000 WL 641601 (M.D. Fla. 2000)." Thomas v. Progress Energy Florida, Inc., FCHR Order No. 08-023 (April 14, 2008). Accord, Neumann v. University of Florida, FCHR Order No. 09-095 (September 22, 2009), and Perez, supra.

A review of Section 95.051, Florida Statutes (2007), indicates that none of the reasons for tolling an action set out therein are applicable to this case or alleged by Petitioner to be applicable in the exceptions document in which Petitioner raises the issue of equitable tolling.

Petitioner's exception that the matter should not be dismissed based on the doctrine of equitable tolling is rejected.

#### Dismissal

The Petition for Relief and Complaint of Discrimination are DISMISSED with prejudice.

The parties have the right to seek judicial review of this Order. The Commission and the appropriate District Court of Appeal must receive notice of appeal within 30 days of the date this Order is filed with the Clerk of the Commission. Explanation of the right to appeal is found in Section 120.68, Florida Statutes, and in the Florida Rules of Appellate Procedure 9.110.

DONE AND ORDERED this 2<sup>nd</sup> day of March, 2011.  
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Gilbert M. Singer, Panel Chairperson;  
Commissioner Watson Haynes, II; and  
Commissioner Darcell Streeter

Filed this 2<sup>nd</sup> day of March, 2011,  
in Tallahassee, Florida.



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Eleanor M. Hunter, Administrative Law Judge, DOAH

James Mallue, Legal Advisor for Commission Panel

I HEREBY CERTIFY that a copy of the foregoing has been mailed to the above listed addressees this 2<sup>nd</sup> day of March, 2011.

By: *Walter Crawford*  
Clerk of the Commission  
Florida Commission on Human Relations